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13 UNITED STATES DISTRICT COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA

16 SANDRA McMILLION, JESSICA ADEKOYA,
17 AND IGNACIO PEREZ, on Behalf of
18 Themselves and all Others Similarly Situated,

19 Plaintiffs,

20 v.

21 RASH CURTIS & ASSOCIATES,

22 Defendant.

Case No.: 4:16-cv-03396-YGR JSC

**DEFENDANT RASH CURTIS &
ASSOCIATES' OPPOSITION TO
PLAINTIFF'S MOTION *IN LIMINE* NO. 3**

Judge: Hon. Yvonne Gonzalez Rogers

Trial Date: May 6, 2019

1 **OPPOSITION TO PLAINTIFF’S MOTION *IN LIMINE* NO. 3**

2 **I. INTRODUCTION**

3 Plaintiff’s Motion *in Limine* No. 3 argues that allowing Rash Curtis’ witnesses to each give
 4 testimony in defense of Rash Curtis at trial would violate Federal Rule of Evidence 403. Plaintiff
 5 argues that because Rash Curtis’ non-retained, hybrid percipient-expert witness disclosures under Rule
 6 26(a)(2)(C) contain “largely identical” topics, all four of these witnesses will give identical,
 7 cumulative testimony. This is not timely and the Motion *in Limine* should be denied.

8 **II. ANALYSIS**

9 Motions *in limine* should “rarely seek to exclude broad categories of evidence, as the court is
 10 almost always better situated to rule on evidentiary issues in their factual context during trial.” *Colton*
 11 *Crane Co., LLC v. Terex Cranes Wilmington, Inc.*, 2010 WL 2035800, at *1 (C.D. Cal. May 19,
 12 2010); *Sperberg v. The Goodyear Time and Rubber Co.*, 519 F.2d 708, 712 (6th Cir. 1975).

13 As a threshold matter, each of Rash Curtis’ witnesses have different roles, duties, and job titles.
 14 Each has distinct, relevant testimony as to Rash Curtis’ collection practices, telephone number storage,
 15 and dialing technology. Likewise, even where they may give percipient-expert testimony on topics
 16 which are “largely identical,” each of Rash Curtis’ witnesses perform different roles in the company.
 17 For the jury to have the best understanding of Rash Curtis’ operations, it should hear testimony from
 18 Rash Curtis’ Vice President of Legal Affairs (Bob Keith), Vice President of Operations (Chris Paff),
 19 IT Manager (Nick Keith), and Collection Manager (Dan Correa).

20 During their depositions, each of Rash Curtis’ witnesses consistently provided testimony as to
 21 their own roles within the company and Rash Curtis’ collection processes (ranging from receiving
 22 debtor demographic information in data file format from its creditor-clients, uploading the data into its
 23 systems, designing collection campaigns, various contact enrichment or “skip-tracing” procedures
 24 performed, manual dialing procedures, operation of its dialers, Rash Curtis’ usage of DAKCS Beyond
 25 software, various collection activities (particularly calling debtors), and the management thereof, etc.).
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1 Rule 403 requires that the probative value of evidence must be substantially outweighed by a
2 danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or
3 needlessly presenting cumulative evidence before the Court may exclude it. Fed. R. Evid. 403.

4 While there may be some minor overlaps as to the testimony of each of these witnesses, that
5 does not constitute “unreasonably cumulative” evidence within the meaning of Rule 26. “Evidence
6 may be relevant even if it is redundant or cumulative”. *Boyd v. City and County of San Francisco*, 576
7 F.3d 938, 943 (9th Cir. 2009). Furthermore, Plaintiff has not shown that the probative value of the
8 testimony of Rash Curtis’ four percipient-experts would be substantially outweighed (let alone
9 outweighed at all) by any of the dangers cautioned by Rule 403.

10 Dated: March 4, 2019

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12 By 

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15 RASH CURTIS & ASSOCIATES
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